

The Pennsylvania Public Utility Commission (PaPUC) submits this Reply Comment to address the Federal Communication Commission's (FCC) notice of a Verizon request to discontinue the requirement of an independent audit of compliance with the merger conditions set forth in the Bell Atlantic-GTE decision (Merger Decision) at CC Docket No. 98-184. PaPUC's Reply Comment relies on record filings and could change in response to future developments. In that event, the PaPUC will file a Supplemental Comment. Finally, the views expressed here should not be construed as evidence of any binding conclusion the PaPUC would reach in a contested on-the-record proceeding.

The PaPUC takes no legal position on claims regarding the FCC's Wireline Competition Bureau (WCB) authority to decide the Verizon request. However, the PaPUC Reply Comment addresses five important issues. These are (1) Condition XXII's requirement of an independent audit; (2) Condition XIII requirements for UNEs, combinations of UNEs, and Line Sharing; (3) Condition V requirements regarding the calculation and remission of voluntary payments to the U.S. Treasury and Verizon's decision to no longer submit restated performance measures; (4) Condition VI requirements mandating uniform interface and business rules for at least eighty percent (80%) of the access lines in GTE Service Areas (now Verizon North in Pennsylvania); and (5) an alternative for Pennsylvania if the relief is granted in whole or in part.

1. The Value of Independent Audits Mandated by Condition XXII. The PaPUC notes that the record suggests that independent audits identify areas of conflicting interpretations and potential noncompliance. Without the independent audit, the PaPUC and other interested state commissions might be unaware of interpretation disputes about Verizon's obligations, interpretations, for example, such as those terminating the practice of submitting restated performance measurement data, and other critical issues like the methodology for measuring compliance with obligations such as the obligation to provide uniform interface and business rules for 80% of Verizon North's (formerly GTE) access lines in Pennsylvania.

An external annual independent audit by a disinterested party provides neutral observations and analysis regarding alleged noncompliance. Additionally, an audit provides interested state commissions with important information about conditions in their states as reflected in the working papers provided to the states as a result of the independent audit. The cost for similar functions on a state-by-state basis could easily exceed the sum current spent by Verizon on the audit.¹

2. Condition XIII's Unbundling Obligation for UNEs, Combinations of UNEs, and Line Sharing.

The PaPUC suggests that the Commission closely examine allegations concerning Condition XIII. Condition XIII encompasses Verizon's obligations regarding UNEs, combinations of UNEs, and Line Sharing.² In Paragraph 316 of the Merger Decision, the FCC recognized the "uncertainty to competing carriers from litigation that may arise in response to [the Commission's] orders in the UNE Remand and Line Sharing proceedings" and approved a BA-GTE commitment that "from now until the date on which the Commission's *order in those proceedings, and any subsequent proceedings, become final and non-appealable*" Verizon would "continue to make available to telecommunications carriers, in accordance with those orders, each UNE *and combination of UNEs* that is required under those orders, until the date of entry of any *final and non-appealable judicial decision* that determines that Bell Atlantic/GTE is not required to provide the UNE or *combination of UNEs* in all or a portion of its operating territory."³

¹These estimates are based on the cost Verizon incurred for the KPMG review of their Pennsylvania Section 271 application and the review of Verizon's performance during and after the migration to New York-style metrics and remedies.

²*BA-GTE Merger*, Appendix D, paragraph 39.

³*Bell Atlantic-GTE Merger Order*, CC Docket 98-184, 15 FCC Rcd 14032 (2000), paragraph 316 (*BA-GTE Merger*, emphasis added). The complete language of Paragraph 316 provides as follows:

316. *Offering of UNEs*. In order to reduce uncertainty to competing carriers from litigation that may arise in response to our orders in the UNE Remand and Line Sharing proceedings, from now until the date on which the Commission's orders in those proceedings, and any subsequent proceedings, become final and non-appealable, Bell Atlantic and GTE will continue to make available to telecommunications carriers, in accordance with those orders, each

There is no final and non-appealable judicial decision that permanently alters the *status quo* set forth in Paragraph 316 at this time. That is because the recent *Triennial Review* Order is under appeal and no judicial decision has issued addressing Commission regulations as required by Paragraph 316 of the Merger Decision. In addition, no party provides record evidence demonstrating that these conditions have been met. Moreover, significant issues, such as state authority and the future of Line Sharing, remain unresolved. These decisions appear to be intertwined.

3. Verizon's Voluntary Payments to the US Treasury and Termination of Filing Restated Performance Data for Condition V Errors.

The PaPUC suggests that the Commission examine claims made by AT&T that: (1) the latest Ernst & Young independent audit identifies an alleged failure to implement a process to adjust voluntary payments made to the US Treasury; and (2) Verizon unilaterally discontinued its practice of filing restated performance measurement data subsequent to March 2003.⁴

In Pennsylvania, Verizon's noncompliance payments for not meeting performance metrics are not remitted to the General Fund. Pennsylvania remits these payments to competitors to encourage compliance. In that regard, Pennsylvania adopted the New York-style methodology to calculate the noncompliance credits, which methodology reduced the overall credits, to encourage competitive performance as opposed to cash flows. The PaPUC is concerned that the absence of a similar structure at the federal level, may impact the Commission's ability to encourage compliance with performance measures.

UNE and combination of UNEs that is required under those orders, until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide the UNE or combination of UNEs in all or a portion of its operating territory. This condition only would have practical effect in the event that our rules adopted in [*33] the UNE Remand and Line Sharing proceedings are stayed or vacated. Compliance with this condition includes pricing these UNEs at cost-based rates in accordance with the forward looking cost methodology first articulated by the Commission in the *Local Competition Order*, until the date of any final and non-appealable judicial decision that determines that Bell Atlantic/GTE is not required to provide such UNEs at cost-based rates.

Importantly, there does not appear to be any basis for Verizon's suspension of the practice of submitting restated performance measurements when prior reports are in error. In Pennsylvania, restatements are not unknown. Pennsylvania, in particular, relies on restated performance measurements to address, clarify, and resolve allegations of nonperformance. Furthermore, the FCC might want to consider a period of parallel reporting, so long as it is consistent with the current terms of the Merger Decision, for old and new performance measures (and remedies when applicable) for ease in detecting any trending across time in regard to the performance measures. These approaches have proven to be a timely and cost effective solution in Pennsylvania compared to expensive investigations and formal complaint proceedings.

For these reasons, the PaPUC asks the Commission to examine this matter and determine whether, and why, Verizon's action is appropriate.

4. 80% Threshold Rate for Uniform Interface and Business Rules in Pennsylvania and Virginia in Condition VI.

Condition VI of the Merger Decision requires Verizon to have uniform interface and business rules for at least 80% of the access lines in GTE Service Areas (now Verizon North) in Pennsylvania and Virginia. Verizon interprets the methodology for calculating compliance different from other parties. Verizon apparently believes that combining the Virginia and Pennsylvania access lines into an overall average that meets 80% complies with this requirement.

The PaPUC suggests that the Commission examine this in detail and affirmatively state that the 80% threshold requirement applies to each state individually and not as on the basis of combined access lines. The PaPUC is concerned that any compliance with this threshold in Pennsylvania for Pennsylvania should not be determined based on Virginia's access lines. Each Commonwealth, Pennsylvania and Virginia, should be entitled to the 80% threshold requirement for compliance. Otherwise, allowing the utilization of combined access lines as the basis for determining compliance could sacrifice the compliance rate of Virginia and Pennsylvania or vice versa.

⁴*AT&T Reply Comment*, p. 17, n. 50.

5. Independent Audit of Compliance with Conditions VI, XI, and XII in Pennsylvania.

Elimination of the independent audit requirement impacts several conditions applicable to Pennsylvania. These are Conditions VI [IDSL – 2/26/2005 for Verizon West (Verizon North Inc); Uniform Billing Account Structure – 12/22/05 for Verizon East (Verizon Pennsylvania Inc.); (Pa Conversion – 7/19/2007 for Verizon East (Verizon Pennsylvania Inc.)], Condition XI [Merger Discounts in Pennsylvania for Verizon East (Verizon Pennsylvania Inc.); Verizon West Merger Discount (Verizon North Inc.)], and Condition XII [Merger Discounts in Pennsylvania -- 8/30/06 for Verizon East (Verizon Pennsylvania Inc.; Verizon West - 8/30/06 (Verizon North Inc.)].

The PaPUC urges the Commission to exclude these areas if any independent audit relief is granted or, in the alternative, allow a state commission to continue the independent audit requirement under federal or independent state law. The PaPUC suggests this alternative because a state commission's ability to ensure compliance with these federal requirements could be undermined if a state commission lacks independent audit information to ensure compliance in their respective states.

The PaPUC thanks the Commission for providing an opportunity to file a Reply Comment.

Respectfully submitted,
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